

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



FILED
8-27-15
04:59 PM

Order Instituting Rulemaking on
Regulations Relating to Passenger Carriers,
Ridesharing, and New Online-Enabled
Transportation Services.

Rulemaking 12-12-011
(Filed December 20, 2012)

**REPLY COMMENTS OF CALINNOVATES.ORG ON
PHASE TWO OF PROCEEDING**

Dated: August 27, 2015

Mike Montgomery
Executive Director
CALinnovates
548 Market St., Ste. 28585
San Francisco, CA 94104
Telephone: (415) 570-9303
Email: mike@calinnovates.org

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking on
Regulations Relating to Passenger Carriers,
Ridesharing, and New Online-Enabled
Transportation Services.

Rulemaking 12-12-011
(Filed December 20, 2012)

**REPLY COMMENTS OF CALINNOVATES.ORG ON
PHASE TWO OF PROCEEDING**

Pursuant to Rule 6.2 of the California Public Utilities Commission (“Commission”) Rules of Practice and Procedure, and the Ruling by the Assigned Administrative Law Judge granting party status,¹ CALinnovates.org (“CALinnovates”) respectfully submits the following reply comments regarding Phase II of the *Order Initiating Rulemaking on Regulations Relating to Passenger Carriers, Ridesharing, and New Online-Enabled Transportation Services* (R.12-12-011) on the issue of driver background checks for Transportation Network Carriers (“TNCs”) that transport unaccompanied minors.

CALinnovates is a non-profit technology advocacy coalition working with innovative companies across California that are improving industries and expanding economic opportunities across the nation. CALinnovates’ membership reaches across many different sectors of the technology ecosystem and includes TNCs.

CALinnovates recently discovered that parties to this proceeding submitted comments about the efficacy of Trustline background checks for rideshare services that transport minors. To provide a fuller examination of this important issue, CALinnovates respectfully requests that the Commission include these comments in the docket for this proceeding. Specifically, CALinnovates seeks to inform the Commission of the incomplete, limited information provided by Trustline, as compared to the modern “gold standard” for background checks. CALinnovates supports the comments filed by Shuddle, Inc., and recommends that the Commission no longer rely on Trustline but instead require TNCs to use the modern safety measures outlined below to protect passengers who are minors.

¹ E Mail Ruling Granting Motion for Party Status of CALinnovates (August 26, 2015).

Trustline was established as a non-profit governmental entity more than thirty years ago to work with the Childcare Resource and Referral Network in using fingerprint databases to screen applicants seeking employment as caregivers for vulnerable populations.² At the time, Trustline was the only source that used data compiled by law enforcement to screen applicants. Since that time, an entire industry has developed that now uses private investigators who search criminal records available directly from multiple databases containing the names, previous addresses and social security numbers of Americans nationwide.

Certainly, databases are only as good as the information they contain. Studies by the U.S. Government Accountability Office and the U.S. Attorney General show that the criminal record searches available today far exceed the information available through Trustline.³ Trustline provides access to proprietary information from the California Department of Justice and the FBI's criminal history records. However, both of these databases may contain instances of arrest only. This paints an incomplete picture, since it fails to contain the corresponding record of disposition which is necessary when contemplating employment, engagement or retention decisions. Relying on incomplete disposition records results in excluding applicants who were ultimately cleared of any charges, which would treat applicants unjustly.⁴ In addition, Trustline's state-based information is limited to California. This is inadequate for safety purposes because modern background checks cover a seven-year history, and many applicants have lived in other states during that period. Modern private investigators research the criminal history records in each state and county in which each applicant lived, which Trustline does not cover.

To ensure public safety for consumers using innovative services, we urge the Commission to require that TNCs conduct an exhaustive search of criminal backgrounds that includes multiple sources, and not rely on Trustline. Accordingly, we recommend that the Commission require TNCs to use the following protocols for background checks of drivers who transport minors:

² Trustline website, http://trustline.org/?page_id=4#What

³ "The Attorney General's Report On Criminal History Background Checks," U.S. Department of Justice, Office of the Attorney General, June, 2006, available upon request due to large file size; "Criminal History Records: Additional Actions Could Enhance the Completeness of Records Used for Employment-Related Background Checks", U.S. Government Accountability Office Report to Congressional Requesters, February, 2015.

⁴ The Greenlining Institute and the ACLU have recognized that using incomplete disposition records has a disparate impact on people of color because of inequities in the criminal justice system. For more information, please see the following report from the National Employment Law Project: <http://www.nelp.org/content/uploads/2015/03/Report-Wanted-Accurate-FBI-Background-Checks-Employment.pdf>.

1. A search of national records, including commercially available national databases, to screen out applicants who have a criminal record that would be inappropriate for the transportation of minors;
2. A search of county records, including county criminal repository searches of backgrounds for applicant drivers, using the following information: (i) the applicant's current and previous names and or aliases; (ii) a search of the applicant's history of addresses and movement patterns covering where the applicant has lived, worked or gone to school in the last seven years; (iii) the applicant's date of birth, and (iv) the applicant's social security number;
3. A search of Sex Offender Registries, including commercially available national and state sex offender and child abuse databases in the states where the applicant has lived;
4. A search of Federal Court Records, including PACER or an equivalent database that covers the 94 federal district courts, 13 federal circuit courts, and the U.S. Supreme Court;
5. A search of Child Abuse Records, including child abuse registry systems in the states where the applicant driver has been found to reside or work in the prior seven years, if available; and,
6. DMV Records, including checks of the driving records of applicant drivers with the DMV of every state in which the applicant has lived in the last seven years, including the identification of criminal history or events not covered in other background checks, such as driving under the influence of drugs or alcohol.

These protocols are used by private investigative services that perform background checks for employers and even defense contractors. It is essential that the Commission update its regulations to reflect current industry standards.

Dated: August 27, 2015

Respectfully submitted,

By: /s/ Mike Montgomery
Mike Montgomery

MIKE MONTGOMERY
Executive Director
CALinnovates
548 Market St., Ste. 28585
San Francisco, CA 94104
Telephone: (415) 570-9303
Email: mike@calinnovates.org